



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS-20-SFH-0025]

RIN 0575-AD21

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), is implementing changes to Single-Family Housing Guaranteed Loan Program (SFHGLP) to mandate the use of the Guaranteed Underwriting System (GUS) and the Lender Loan Closing System (LLC) by approved lenders. The Agency's mandated use of GUS in loan originations and the LLC for loan closings will allow the Agency to decrease time-consuming and expensive manual file reviews, improve performance monitoring and reduce program risk of the guaranteed loan portfolio.

DATES: This final rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ticia Weare, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-0784. Telephone: (702)407-1400

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SUPPLEMENTARY INFORMATION:

Background

Rural Housing Service (RHS or Agency) is an agency of the U.S. Department of Agriculture. RHS is issuing a final rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulations found in 7 CFR part 3555, subparts C and D, by updating the regulations to align the Agency's program with the mortgage industry expectations in the domain of information technology.

In order to provide efficient and timely delivery of the SFHGLP, it is necessary to streamline the processing of SFHGLP applications using automation initiatives as much as possible. The Agency is revising the regulation to mandate that lenders utilize GUS and the LLC systems for all supported applications and loan closing files. Mandatory use of GUS and the LLC will allow uniformity in application submissions, consistency in the timely processing of loan requests and will save time and administrative costs for both lenders and the Agency by eliminating the requirement for paper file storage, shredding costs, and mail with overnight courier fees.

GUS is compatible with the Loan Origination Systems and Point of Sale vendors that are widely accepted throughout the industry. All SFHGLP loan products are supported by GUS, except for streamlined-assist refinance transactions and select pilot programs. Lenders will continue to submit manually underwritten files for these types of transactions by electronic means approved by the Agency. These loans are different from loans downgraded in GUS for manual underwriting—the downgraded loans will continue to be submitted via GUS for a manual review. Mandatory use of the automated underwriting system not only offers ease to lenders when uploading closing documents and payment of the guarantee and technology fees using the LLC, but efficiently and effectively allows Agency staff the capability to review loan applications, increases

lender's ability to transfer loans to program investors, and lessens the timeframe for underwriting and processing loan approvals.

GUS is a robust automated system that processes application requests and provides specific loan closing data to the lender and the Agency. It offers added benefits to the lender's decision-making process by producing underwriting findings reports and reliable credit data for managing borrower risks.¹ Expanded use of the system will maximize the impact of core agency programs and drive innovation that will remove obstacles that delay loan production.

This final rule will change how the agency receives loan requests by mandating the use of GUS for all supported loan type submissions and the LLC for all loan submissions. Currently, the Agency allows approved lenders to submit applications for loan guarantee requests by mail, electronic mail (e-mail) or GUS.

Discussion of Public Comments Received on January 19, 2021 Proposed Rule

On November 17, 2020, RHS published a proposed rule for comments on the mandatory use of GUS for SFHGLP (85 FR 73241). The Agency received comments from eighteen respondents including Banks, Credit Unions, and other interested parties.

Specific public comments are addressed below:

Comment: Two respondents' comments were unrelated to the proposed rule. One was an inquiry for small business loan assistance and the other, a business advertisement.

Agency Response: The Agency has determined that no action is required.

Comment: Two respondents commented that the benefit of the proposed rule will improve efficiency and effectiveness; however, they are concerned with the elimination of manual underwriting considering the automated underwriting system may be inadequate

¹ GUS is a tool that helps evaluate the credit risk but does not replace the informed judgment of the experienced underwriter's decision and does not serve the sole basis for making a final loan decision. *See* 7 CFR 3555.107(b).

for certain credit risk scenarios and want to ensure an accommodation is considered for these scenarios.

Agency Response: The Agency has determined that no action is required, the manual underwriting process remains unchanged for the following GUS recommendations of “Refer, Refer with Caution”.

Comment: Eight respondents commented they are concerned that the requirement for all lenders to submit requests through GUS would eliminate manual underwriting for submissions that receive a GUS recommendation of “Refer or Refer with Caution”. In addition, applicants without a credit score may be unable to apply.

Agency Response: The use of alternate credit and the manual underwriting process remains unchanged for the following GUS recommendations: Refer, Refer with Caution. The Agency has provided clarification in §3555.107(c)(1) and §3555.107(c)(2), by adding language explaining loans with GUS recommendations of “Refer and Refer with Caution” will continue to be manually underwritten. Clarification was added to §3555.107(i)(4), explaining all closed loans including manual submissions are required to use Rural Development’s automated systems.

Comment: Four respondents commented in favor of the proposed rule and indicate the rule will create a positive impact on consistency and efficiency.

Agency Response: The Agency has determined that no action is required.

Comment: Two respondents commented in opposition to the proposed rule, one citing a possible adverse impact on smaller lenders with limited resources who rely on manual submissions and the other cited concerns over accuracy of the data input as well as an economic impact the proposed rule may have.

Agency Response: The Agency has determined that no action is required. The Agency does not anticipate a barrier to program participation and offers two opportunities to participate: (1) through a connection with the lender’s point of sale or loan origination

system, (2) entering loan application information directly into GUS. GUS is available to all approved lenders with eAuthentication credentials. The Agency has an established process for lenders to obtain eAuthentication credentials online that is free, easy, and does not create a burden to the lender. It is anticipated that the rule will provide more consistent and timely reviews which will benefit all lenders including small lenders.

Summary of Changes to Rule

A summary of the changes includes amending 7 CFR 3555.107(b) introductory text and (b)(1),(3),and (6), to reflect that the use of the Agency's automated underwriting system will be required for all supported submissions by alternate means, such as e-mail or hard copy, will not be permitted and therefore the Agency will eliminate references to such submission methods.

This final rule also amends §3555.107(c) and add paragraphs (c)(1) and (2) to describe the two types of loans that will continue to be manually underwritten. First, loan products not supported by the automated origination system, such as streamlined-assist refinance transactions and select pilot programs, must be manually underwritten and submitted via secure e-mail or other electronic means approved by the Agency. Second, loans downgraded in the Agency's automated origination system require manual underwriting, although lenders will continue to submit the loan documentation via the Agency's automated systems.

Concurrently, §3555.107(i)(4) will be amended to require all loan closing documentation to be submitted via the Agency's automated systems.

Regulations §3555.151(h)(2) will also be amended to clarify procedures for manually underwritten loans. The loan files for manually underwritten loans will continue to be submitted through the automated underwriting system but require full documentation review, and credit score validation or compensating factors.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Orders and Acts

Executive Order 12866, Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a

reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

The final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by

signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this final rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: ALAN@usda.gov to request such a consultation.

Programs Affected

The program affected by this final rule is listed in the Assistance Listing Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0575- 0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted

or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW.

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) E-mail: program.intake@usda.gov

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List of Subjects in 7 CFR Part 3555

Construction, Eligible loan purpose, Home improvement, Loan programs – housing and community development, Loan terms, Mortgage insurance, Mortgages, Rural areas.

For the reasons discussed in the preamble, the Agency is amending 7 CFR part 3555 as follows:

PART 3555 – GUARANTEED RURAL HOUSING PROGRAM

1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart C – Loan Requirements

2. Amend § 3555.107 by revising paragraphs (b) introductory text, (b)(1), (3), and (6), (c), and (i)(4) to read as follows:

§ 3555.107 Applications for and issuance of the loan guarantee.

* * * * *

(b) *Automated underwriting.* Approved lenders are required to process SFHGLP loans using Rural Development's automated systems. The automated underwriting system is a tool to help evaluate credit risk but does not substitute or replace the careful judgment of experienced underwriters and shall not be the exclusive determination on extending credit. The lender must apply for and receive approval from Rural Development to utilize the automated underwriting system. Rural Development reserves the right to terminate the lender's use of the automated underwriting system.

(1) Lenders are responsible for ensuring all data is true and accurately represented in the automated underwriting system.

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(3) The use of Rural Development's automated underwriting system subjects the lender to indemnification requirements in accordance with § 3555.108.

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(6) Lenders will validate findings based on the output report of the automated underwriting system.

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(c) *Manual underwriting.* Loans requiring manual underwriting (manually underwritten loans) are described in paragraphs (c)(1) and (2) of this section. For manually underwritten loans, full documentation, and verification in accordance with subparts C, D, and E of this part will be submitted to Rural Development when requesting a guarantee and maintained in the lender's file. The documentation will confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, adequate collateral, and satisfaction of other regulatory requirements. The following types of loans require manual underwriting:

(1) Loans downgraded by Rural Development's automated system. These loans are manually underwritten by the lender and submitted utilizing Rural Development's automated system.

(2) Loans that are not supported by Rural Development's automated systems. These loans are manually underwritten by the lender and submitted by secure e-mail or other electronic means approved by the Agency.

* * * * *

(i)***

(4) For all loan submissions, evidence of documentation supporting the properly closed loan will be submitted using Rural Development's automated systems.

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Subpart D – Underwriting the Applicant

3. Amend § 3555.151 by revising paragraph (h)(2) introductory text to read as follows:

§ 3555.151 Eligibility requirements.

* * * * *

(h)* * *

(2) The repayment ratio may exceed the percentage in paragraph (h)(1) of this section when certain compensating factors exist. The handbook, HB-1-3555, Appendix I, located at <https://www.rd.usda.gov/sites/default/files/hb-1-3555.pdf>, will provide examples of when a debt ratio waiver may be granted. The automated underwriting system will consider any compensating factors in determining when the variance is appropriate. Loans downgraded in the automated underwriting system which must be manually underwritten will require the lender to document compensating factors. The presence of compensating factors does not strengthen a ratio exception when multiple layers of risk are present in the application. Acceptable compensating factors, supporting documentation, and maximum ratio thresholds, will be further defined and clarified in the handbook. Compensating factors include but are not limited to:

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Joaquin Altoro,
Administrator,
Rural Housing Service.

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